

## REMARKS

Claims 1, 9, 13, 21, 23, 29, 31 and 34 are amended. Claims 1-38 remain in the application for consideration. In view of the following remarks, Applicant respectfully requests withdrawal of the rejections and forwarding of the application onto issuance.

### §102 and §103 Rejections

Claims 21-22 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,496,802 to Van Zoest et al. (hereinafter "Van Zoest").

Claims 35-38 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,269,122 to Prasad et al. (hereinafter "Prasad").

Claims 1-6, 9-11, 13, 16, 17, 23-26 and 31 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,655,144 to Milne et al. (hereinafter "Milne"), in view of U.S. Patent No. 6,442,758 to Jang et al. (hereinafter "Jang").

Claim 34 stands rejected under 35 U.S.C. §103(a) as being obvious over Van Zoest in view of Jang.

Claims 7-8, 12, 14-15, 27-28, and 32-33 stand rejected under 35 U.S.C. §103(a) as being obvious over Milne in view of Jang and Van Zoest.

Claims 18-20 stand rejected under 35 U.S.C. §103(a) as being obvious over Milne and Jang in further view of U.S. Patent No. 6,314,569 to Chernock et al. (hereinafter "Chernock").

Claims 29-30 stand rejected under 35 U.S.C. §103(a) as being obvious over Van Zoest and Jang, in further view of Chernock.

1 Applicant has made some clarifying amendments in the claims mentioned  
2 above. Applicant believes that these clarifying amendments more particularly  
3 describe subject matter that is patentably distinct from the references cited by the  
4 Office. Before discussing these clarifying amendments and the substance of the  
5 Office's rejections, a short discussion of Applicant's disclosure, as well as the  
6 Milne reference is provided to assist the Office in appreciating the patentable  
7 distinctions in Applicant's various claimed embodiments.

### 8 9 Applicant's Disclosure

10 Perhaps a good place to start to appreciate the various claimed  
11 embodiments in the present application is the "Background" section of the  
12 application. There, various problems associated with visualizations are described.  
13 Specifically, starting on page 1, line 12, the application states as follows:

14  
15 One problem associated with prior art media players is they all tend  
16 to display different types of media in different ways. For example, some  
17 media players are configured to provide a "visualization" when they play  
18 audio files. *A visualization is typically a piece of software that "reacts" to  
19 the audio that is being played by providing a generally changing, often  
20 artistic visual display for the user to enjoy.*

21 \*\*\*

22 [T]here are problems associated with prior art visualizations. As an  
23 example, consider the following. One of the things that makes  
24 visualizations enjoyable and interesting for users is the extent to which they  
25 "mirror" or follow the audio being played on the media player. Past  
visualization technology has led to visualizations that do not mirror or  
follow the audio as closely as one would like. This leads to things such as a  
lag in what the user sees after they have heard a particular piece of audio. It  
would be desirable to improve upon this media player feature.

1 Material in the specification that describes the visualization embodiments  
2 begins on page 15 at line 18. The references cited by the Office, by and large, do  
3 not deal with *visualizations* as that term is contemplated and used in the present  
4 application. The various clarifying amendments have been made in an attempt to  
5 more clearly draw out this distinction.

### 6 7 The Milne Reference

8 Milne describes methods and systems for providing synchronization of the  
9 *timing* of various multimedia events, including an audio event. In accordance with  
10 Milne's disclosure, clock objects are defined and are associated with an internal or  
11 external source of current time. The clock objects are able to be displayed on a  
12 display, but can be hidden once their linkages are defined. One or more  
13 multimedia objects representative of audio, visual or other multimedia events,  
14 including an audio object, are defined and linked to a particular clock object or  
15 clock objects. Then, a processor synchronizes the multimedia objects with the  
16 associated clock object or objects. Milne instructs that the various multimedia  
17 events are then performed in synchronization with their associated clocks.

18 Milne goes to great lengths to explain how its various clocks can be  
19 synchronized to, in turn, synchronize associated audio and video. For example, in  
20 column 9, starting at line 44, Milne describes how audio and video sequences can  
21 be synchronized, as shown in Fig. 11. In order to synchronize the audio and video  
22 sequences, Milne instructs that the clocks of two players would be synchronized as  
23 shown in Fig. 12. There, the audio player is viewed as the master clock and the  
24 video player is slaved to the audio player so that it always follows the audio  
25 player.

1 Thus, what Milne is concerned with is probably best thought of as  
2 synchronizing presentation times through techniques that establish relationships  
3 between clocks associated with different types of media. When viewed in the  
4 context of the claimed subject matter, it becomes apparent that the various claimed  
5 embodiments are really concerned with something that is quite different from  
6 Milne.

### 7 8 The Claimed Subject Matter Rejected Over Milne

9 Claim 1 has been amended and recites a system for synchronizing a  
10 visualization with audio samples comprising [amended language appears in bold  
11 italics]:

- 12
- 13 • one or more audio sources configured to provide audio samples that  
are to be rendered by a media player;
- 14 • an audio sample pre-processor communicatively linked with the one  
or more audio sources and configured to receive and pre-process  
15 audio samples before the samples are rendered, the pre-processing  
providing characterizing data associated with each sample, *wherein*  
16 *the characterizing data is derived from the audio samples*; and
- 17 • one or more effects configured to receive the characterizing data and  
use the characterizing data to render a visualization that is  
18 synchronized with an audio sample that is being rendered by the  
media player.
- 19

20 In making out the rejection of this claim, the Office argues that Milne  
21 teaches:

- 22
- 23 (1) one or more audio sources configured to provide audio samples,  
and cites to column 16, lines 13-19, column 15, lines 48-60;
- 24 (2) one or more effects configured to receive the characterizing  
data and use the characterizing data to render a visualization
- 25

1 that is synchronized with an audio sample that is being rendered  
2 by the media player, and cites to column 17, lines 15-63, and  
3 Figs. 12 and 36; and

- 4 (3) an audio sample pre-processor communicatively linked with the  
5 one or more audio sources and configured to receive and pre-  
6 process audio samples before the samples are rendered to  
7 provide characterizing data associated with each sample, and  
8 cites to column 19, lines 1-11.

9 The Office notes that it considers Milne's clock rate to meet the  
10 "characterizing data" recited in this claim. Applicant has clarified this claim to  
11 recite that the characterizing data is derived from the audio samples. Support for  
12 this amendment can be found throughout Applicant's Specification. For example,  
13 starting on page 19 at line 21, the Specification describes one example in which  
14 the characterizing data can comprise frequency data as follows:

15 Step 1000 receives multiple audio samples. These samples are  
16 typically received into an audio sample pipeline that is configured to  
17 provide the samples to a renderer that renders the audio samples so a user  
18 can listen to them. Step 1002 preprocesses the audio samples to provide  
19 characterizing data for each sample. Any suitable characterizing data can  
20 be provided. *One desirable feature of the characterizing data is that it  
21 provides some measure from which a visualization can be rendered. In  
22 the above example, this measure was provided in the form of frequency  
23 data or wave data. The frequency data was specifically derived using a  
24 Fast Fourier Transform.* It should be appreciated and understood that  
25 characterizing data other than that which is considered "frequency data", or  
that which is specifically derived using a Fast Fourier Transform, can be  
utilized. (emphasis added).

Applicant respectfully submits that the clock rate to which the Office refers  
is not *derived from* any of Milne's audio samples. Rather, Milne's clock rate  
appears to emanate from a software clock (as noted by the Office in column 6, line  
63+). Milne further describes its software clock and defines its function in column

1 7, line 23 through column 8, line 25. A thorough reading of this section in the  
2 context of Milne's disclosure makes it readily clear that what the Office considers  
3 as Milne's "characteristic data" is not *derived from any audio samples* as that  
4 feature is understood in the context of Applicant's disclosure.

5 Given the clarifying amendment that has been made and Milne's failure to  
6 disclose or suggest this feature, the Office's reliance on Jang in making out the  
7 present rejection is not seen to add anything of significance. To this extent,  
8 Applicant maintains its position, as articulated in the previously-filed response,  
9 regarding the Office's failure to establish a *prima facie* case of obviousness based  
10 on the combination with Jang. Accordingly, for at least this reason, the Office has  
11 not established a *prima facie* case of obviousness and this claim is allowable.

12 **Claims 2-8** depend from claim 1 and are allowable as depending from an  
13 allowable base claim. These claims are also allowable for their own recited  
14 features which, in combination with those recited in claim 1, are neither disclosed  
15 nor suggested in the references of record, either singly or in combination with one  
16 another. Given the allowability of these claims, the rejection of claims 7 and 8  
17 over the combination with Van Zoest is not seen to add anything of significance.

18 **Claim 9** has been amended and recites a media player comprising [added  
19 language appears in bold italics]:

- 20
- 21 • an audio sample pre-processor configured to receive and pre-process  
22 audio samples before the samples are rendered by the media player,  
23 the pre-processing providing frequency data associated with each  
24 sample, *wherein the frequency data is derived from the audio*  
25 *samples*; and
- one or more effects configured to receive the frequency data and use  
the frequency data to render a visualization that is synchronized with  
an audio sample that is being rendered by the media player.

1  
2 In making out the rejection of this claim, the Office argues that Milne  
3 discloses "one or more effects" as recited and cites to column 17, lines 15-63.  
4 Further, the Office argues that Milne discloses an audio sample pre-processor as  
5 recited and cites to column 16, lines 13-39, column 15, lines 48-60, and column  
6 19, lines 1-11. The Office then apparently relies on Jang in much the same way as  
7 it relied on Jang to make out the rejection of claim 1.

8 This claim has been clarified to recite that the recited frequency data is  
9 derived from the audio samples. Milne neither discloses nor suggests any such  
10 subject matter. As such, the Office has failed to establish a *prima facie* case of  
11 obviousness. Accordingly, this claim is allowable.

12 **Claims 10-12** depend from claim 9 and are allowable as depending from an  
13 allowable base claim. These claims are also allowable for their own recited  
14 features which, in combination with those recited in claim 9, are neither disclosed  
15 nor suggested in the references of record, either singly or in combination with one  
16 another. Given the allowability of these claims, the rejection of claim 12 over the  
17 combination with Van Zoest is not seen to add anything of significance.

18 **Claim 13** has been amended and recites a system for synchronizing a  
19 visualization with audio samples comprising [added language appears in bold  
20 italics]:

- 21
- 22 • an audio sample pre-processor configured to receive and preprocess  
23 audio samples before the samples are rendered by a renderer that  
24 comprises part of a media player, the audio sample preprocessor  
25 preprocessing the samples to provide characterizing data ***derived  
from*** each sample, the characterizing data comprising a timestamp  
associated with each audio sample, the timestamp being assigned in

1 accordance with when the audio sample is calculated to be rendered  
2 by the renderer;

- 3 • multiple data structures configured to hold the characterizing data,  
4 each data structure being associated with an audio sample;
- 5 • an audio rendering object configured to call the audio sample pre-  
6 processor to ascertain the characterizing data associated with an  
7 audio sample that is currently being rendered by the renderer;
- 8 • the audio sample pre-processor being configured to ascertain said  
9 characterizing data by querying the renderer for a time associated  
10 with the currently-rendered audio sample, and then using said time  
11 to identify a data structure having a timestamp that is nearest in  
12 value to said time; and
- 13 • one or more effects configured to receive characterizing data that is  
14 associated with the data structure having the timestamp that is  
15 nearest in value to said time, and use the characterizing data to  
16 render a visualization that is synchronized with the audio sample that  
17 is being rendered by the renderer.

18  
19 In making out the rejection of this claim, the Office argues that Milne  
20 discloses:

- 21 (1) an audio rendering object as recited and cites to column  
22 6, lines 21-33 and column 8, lines 32-39;
- 23 (2) one or more effects as recited and cites to column 17,  
24 lines 15-63;
- 25 (3) an audio sample pre-processor as recited and cites to  
column 9, lines 43-61, column 8, lines 40-65, column 16,  
lines 13-39, column 15, lines 48-60, and column 16, lines  
40 to column 17, line 12.

26  
27 As noted above, Milne neither discloses nor suggests a system in which  
28 characterizing data is *derived from* each audio sample, as used in the context of  
29 this claim and the Specification. Given this shortcoming, the combination with  
30 Jang is not seen to add anything of significance. As such, the Office has failed to  
31 establish a *prima facie* case of obviousness and this claim is allowable.



1       **Claims 14-20** depend from claim 13 and are allowable as depending from  
2 an allowable base claim. These claims are also allowable for their own recited  
3 features which, in combination with those recited in claim 13, are neither disclosed  
4 nor suggested in the references of record, either singly or in combination with one  
5 another. Given the allowability of these claims, the rejections of claims 14-15  
6 over the combination with Van Zoest, and of claims 18-20 over Chernok are not  
7 seen to add anything of significance.

8       **Claim 23** has been amended and recites a method of providing a  
9 visualization comprising [added language appears in bold italics]:

- 10       • receiving multiple audio samples;
- 11       • pre-processing the audio samples before they are rendered by a  
12       media player renderer, the pre-processing ***deriving*** characterizing  
13       data ***from*** each sample;
- 14       • determining when an audio sample is being rendered by the media  
15       player renderer; and
- 16       • responsive to said determining, using the characterizing data that is  
17       associated with the audio sample that is being rendered to provide a  
18       visualization.

19       In making out the rejection of this claim, the Office argues that Milne  
20 discloses:

- 21       (1) receiving multiple audio samples and cites to column 16,  
22       lines 13-39 and column 15, lines 48-60;
- 23       (2) determining when an audio is being rendered as recited  
24       and cites to column 19, lines 1-11 and column 17, lines  
25       15-63;
- 26       (3) responsive to determining, using the characterizing data  
27       that is associated with the audio sample that is being  
28       rendered to provide a visualization, and cites to column  
29       17, lines 15-63; and

1 (4) preprocessing the audio samples before they are rendered  
2 by a media player to provide characterizing data, and  
3 cites to column 16, lines 13-39, and column 15, lines 48-  
4 60.

5 The Office then relies on Jang's teaching of a pre-processor and argues that  
6 it would be obvious to combine the two teachings to render the subject matter of  
7 this claim obvious. Applicant respectfully disagrees with the Office's  
8 interpretation and application of these references, particularly in view of the  
9 clarifying amendment that has been made. Specifically, Milne does not teach or  
10 suggest a method in which any pre-processing *derives* characterizing data *from*  
11 each audio sample. Accordingly, for at least this reason, the Office has failed to  
12 establish a *prima facie* case of obviousness and this claim is allowable.

13 **Claims 24-28** depend from claim 23 and are allowable as depending from  
14 an allowable base claim. These claims are also allowable for their own recited  
15 features which, in combination with those recited in claim 23, are neither disclosed  
16 nor suggested in the references of record, either singly or in combination with one  
17 another. Given the allowability of these claims, the rejection of claims 27-28 over  
18 the combination with Van Zoest is not seen to add anything of significance.

19 **Claim 29** has been amended and recites a method of providing a  
20 visualization comprising [added language appears in bold italics]:

- 21 • receiving multiple audio samples;
- 22 • pre-processing the audio samples before they are rendered by a  
23 media player renderer, the pre-processing comprising at least (1)  
24 using a Fast Fourier Transform to *derive* frequency data *from* the  
25 samples, and (2) associating a timestamp with each sample;
- maintaining frequency data and a timestamp for each sample in a  
data structure;

- determining when an audio sample is being rendered by a media player renderer by:
- ascertaining a time associated with a currently-rendered sample; and
- selecting a data structure having a timestamp that is nearest the time; and
- providing frequency data associated with the selected data structure to a component configured to use the frequency data to render the visualization.

In making out the rejection of this claim, the Office argues that this claim is rendered obvious in view of Milne, Jang and Van Zoest. Applicant respectfully disagrees, particularly in view of the clarifying amendment that has been made. More specifically, Milne neither discloses nor suggests, singly or in combination with any of the references of record, pre-processing audio samples before they are rendered by a media player renderer, where the pre-processing comprises at least (1) using a Fast Fourier Transform to *derive* frequency data *from* the samples, and (2) associating a timestamp with each sample, and then further using the frequency data as recited in this claim. Accordingly, for at least this reason, this claim is allowable.

**Claim 30** depends from claim 29 and is allowable as depending from an allowable base claim. This claim is also allowable for its own recited features which, in combination with those recited in claim 29, are neither disclosed nor suggested in the references of record, either singly or in combination with one another.

**Claim 31** has been amended and recites a method of providing a visualization comprising [added language appears in bold italics]:

- calling an audio sample pre-processor for characterizing data that *has been derived from an* associated audio sample that is currently being rendered by a media player renderer;
- calling the media player renderer for a time associated with a currently-rendered audio sample;
- using the time to select a data structure containing characterizing data associated with the currently-rendered audio sample; and
- providing the characterizing data to a component for rendering a visualization.

In making out the rejection of this claim, the Office argues that Milne discloses the various acts recited in this claim and cites to various sections of Milne in support therefore. The Office then relies on Jang in much the same way it relied on Jang to reject the above-discussed claims. Applicant respectfully disagrees with the Office's interpretation and application of Milne, particularly in view of the clarifying amendment that has been made. Specifically, Milne neither discloses nor suggests a method in which an audio sample pre-processor is called for characterizing data that *has been derived from* an associated audio sample. Accordingly, the Office has failed to establish a *prima facie* case of obviousness and this claim is allowable.

**Claims 32-33** depend from claim 31 and are allowable as depending from an allowable base claim. These claims are also allowable for their own recited features which, in combination with those recited in claim 31, are neither disclosed nor suggested in the references of record, either singly or in combination with one another. Given the allowability of these claims, the rejection of claims 32-33 over the combination with Van Zoest is not seen to add anything of significance.

1       **Claim 34** has been amended and recites one or more computer-readable  
2 media having computer-readable instructions thereon which, when executed by a  
3 computer, cause the computer to [added language appears in bold italics]:

- 4
- 5       • pre-process audio samples using a Fast Fourier Transform to ***derive***  
6       ***from the audio samples*** frequency data, the audio samples being  
7       pre-processed before they are rendered by a media player renderer;
- 8       • query for frequency data that is associated with an audio sample that  
9       is currently being rendered by the media player renderer;
- 10       • query for a time associated with the currently-rendered audio  
11       sample;
- 12       • use the time to select a data structure containing frequency data  
13       associated with the currently-rendered audio sample; and
- 14       • provide the frequency data to a component that uses the frequency  
15       data for rendering a visualization.

16       In making out the rejection of this claim, the Office argues that the  
17 combination of Milne, Jang and Van Zoest render its subject matter obvious.  
18 Applicant respectfully disagrees, particularly in view of the clarifying amendment  
19 that has been made above. More specifically, none of the cited references disclose  
20 or suggest using a FFT to derive frequency data from audio samples, and then  
21 providing the derived frequency data to a component that uses the frequency data  
22 for rendering a visualization.

23       As Applicant noted in its previous response, Van Zoest discloses simply  
24 using frequency data in a verification process that is tangential, at best, to any  
25 rendering that takes place in its system. As none of the references disclose or  
suggest this subject matter, this claim is allowable.

1                    **The Claimed Subject Matter Rejected Over Van Zoest**

2                    **Claims 21-22** stand rejected under 35 U.S.C. §102(e) as being anticipated  
3 by Van Zoest. Claim 21 has been amended and recites a system for processing  
4 audio samples comprising [added language appears in bold italics]:

- 5
- 6                    • a timestamp module for assigning timestamps to audio samples that  
7                    are to be rendered by a media player renderer;
  - 8                    • a spectrum analyzer for processing the audio samples to *derive*  
9                    frequency data *from* the audio samples;
  - 10                   • multiple data structures each of which being associated with an  
11                   audio sample, the data structures each containing timestamp data and  
12                   frequency data for its associated audio sample; and
  - 13                   • the system being configured to use the timestamp data to ascertain a  
14                   data structure associated with an audio sample that is currently being  
15                   rendered by the media player renderer and provide the frequency  
16                   data associated with that audio sample so that the frequency data can  
17                   be used to render a visualization associated with that audio sample.

18                   In making out the rejection of this claim, the Office argues that Van Zoest  
19 discloses:

- 20                   (1) a timestamp module as recited, citing to column 4, lines 57-  
21                   65;
- 22                   (2) a spectrum analyzer as recited, citing to column 16, lines 9-  
23                   43;
- 24                   (3) multiple data structures as recited, citing to column 9, lines  
25                   24-65, column 4, lines 57-65, and column 16, lines 9-14; and
- (4) a system configured to use the timestamp data to ascertain a  
                  data structure associated with an audio sample and provide  
                  the associated frequency data *so that the frequency data can  
                  be used to render a visualization associated with that audio  
                  sample*, citing to column 18, lines 55 through column 19, line  
                  12.

1 Applicant respectfully disagrees with the Office's interpretation of this  
2 reference. Nonetheless, Applicant has clarified this claim as noted above.

3 Van Zoest discloses systems and methods for providing access to electronic  
4 works over a network. In Van Zoest's system, a user can request access to a  
5 particular work, such as songs, movies and albums. Before such a request is  
6 granted, the Van Zoest's system verifies that the user is authorized to access to the  
7 work. In one of Van Zoest's embodiments, the user verifies that they are  
8 authorized to access an electronic copy of the work by demonstrating that they  
9 possess a physical copy of the work. If a user's authorization is verified, the user  
10 may then be provided with access to an electronic copy of the work by such  
11 techniques as downloading or streaming.

12 With respect to the verification processing, Van Zoest describes one  
13 approach, which is cited by the Office as anticipating the spectrum analyzer  
14 recited in this claim, see, e.g. column 16, lines 9-43, which is reproduced in its  
15 entirety below, along with preceding text to provide context:

16  
17 In a preferred embodiment, such a comparison may make sure it is  
18 comparing like data with many well-known techniques, such as correlation  
19 and/or phase shifting. Specifically, the Verification Server 141 requests a  
20 portion of data from a client machine. The client machine collects this data  
21 from a physical work and sends this data to the Distributor Location 100.  
22 The Verification Server 141 receives the corresponding data collected from  
23 the physical work and determines whether this data can match up with the  
24 data of one or more stored electronic works. To reduce possible problems  
25 caused by mechanical error, the comparison may not match the data exactly  
as it is received. Instead, the Verification Server 141 may first identify  
whether any portion of the sample received from the first work potentially  
matches any portion of a stored electronic work or sample of a stored  
electronic work. Once it identifies the corresponding portions of data for  
maximum correlation, the Verification Server 141 may use correlation  
and/or phase shifting techniques to manipulate the data so that the

1 comparison is not thrown off by mechanical inaccuracies, such as the  
2 inaccuracy of the user's personal computer reading a CD.

3 For example, as shown in FIG. 5, the customer sample may need to  
4 be shifted forward or backward to perform a more accurate verification.  
5 The results of shifting one of the samples across time is shown in FIG. 6.  
6 Once the Verification Server 141 identifies the corresponding portions of  
7 the samples with maximum correlation, Verification Server 141 can size  
8 down the two waveforms until they contain the same portion of the track, as  
9 shown in FIGS. 6 and 7.

10 Once the most closely corresponding portions of the samples or  
11 works are identified, the verification process compares these possibly  
12 corresponding portions of the samples. In a preferred embodiment, the  
13 verification process runs a Fast Fourier Transform ("FFT") algorithm on  
14 each WAV samples to generate their respective power spectrums. The  
15 computer can then compare these two spectrums.

16 The Verification Server 141 performs the FFT. The FFT provide a  
17 frequency analysis of the data. The Verification Server 141 compares either  
18 or both channels of a stereo audio file and averages the results. When the  
19 data on the physical work matches the data on the electronic work perfectly,  
20 the difference between the audio files in the power spectrum can be 0.000.  
21 Conversely, if a CD is badly scratched at this specific location on the disk  
22 or the physical work is different from the electronic work, the two data may  
23 not compare too well. However, in a preferred embodiment, a scratch  
24 should only affect one or two samples of the 20 samples so that the system  
25 could still recognize the match. Additionally, as an alternative to FFT, the  
Verification Server 141 can perform direct waveform comparisons of the  
sampled and stored data.

If the received information identically or substantially matches only  
one stored CD, then the Verification Server 141 automatically stores a  
pointer to the formatted version of this title in the client's personal account.  
Otherwise, the Verification Server 141 asks for additional data (e.g., send  
the seven sectors of data found on track four at the tenth second of playing  
time). The system repeats this process until it has received an acceptable  
amount of data to verify or reject the CD in the user's machine or until it  
completes a predetermined set of requests. The number of requests for  
information by the Verification Server 141 can vary as necessary, as can the  
number of channels of data and sampling rate.



1 Thus, what is described in this excerpt is a verification process that seeks to  
2 verify that a user is authorized to receive a particular work. It does this by  
3 comparing aspects of a user's physical work, with aspects of an electronic work  
4 desired for receipt by a user.

5 The Office then argues that Van Zoest anticipates the subject matter of item  
6 (4) above and cites to column 18, line 55 through column 19, line 12 in support  
7 therefore. The entirety of this excerpt is provided below for the convenience of  
8 the Office:

9  
10 Once a work is loaded or accessible to a user, the user can access  
11 those works through a variety of graphical user interfaces and organization  
12 models, such as a juke box, alphabetically, by artist, by type of work, by  
category of work, by verification date, etc.. In a preferred embodiment, the  
works are organized as shown in FIGS. 8-19.

13 The user may be provided with access to the electronic works  
14 identified in their account by downloading, streaming, email enclosure, or  
15 many other well-known techniques. Such access may be provided via the  
16 user's personal computer, cell phone, personal digital assistant, pager, car  
17 stereo, television or any media player. Before providing such access, the  
18 Content Delivery System 152 may attempt to identify what media player  
19 the user is accessing the works with. These characteristics may be  
20 automatically provided to the Distributor Location 100 as a header or some  
21 other information field included with the user data. The Distributor  
22 Location 100 could also request the information automatically from the  
23 user's device or the user. If the information is requested from the user, the  
24 user could identify their device by manually entering "cell phone" into a  
25 blank field or selecting their device from a list of available devices. In an  
alternative embodiment, it may also be able to identify the user's device to  
accommodate for geographically specific server farms.

23 The subject claim language that the Office argues is anticipated by this  
24 excerpt is as follows:  
25

\*\*\*

1 the system being configured to use the timestamp data to ascertain a  
2 data structure associated with an audio sample that is currently being  
3 rendered by the media player renderer and *provide the frequency data*  
4 *associated with that audio sample so that the frequency data can be used to*  
5 *render a visualization associated with that audio sample.*

6 Nowhere does Van Zoest disclose or suggest a system that provides  
7 frequency data that has been derived from an audio sample so that the frequency  
8 data *can be used to render a visualization* associated with that audio sample.  
9 Perhaps this is because of Van Zoest's divergent use of its frequency data.  
10 Specifically, Van Zoest uses its frequency data simply to effect a comparison of  
11 two particular works so that a user can be verified to receive a copy of the work.  
12 The presently-recited subject matter, on the other hand, incorporates the derived  
13 frequency data in the process of rendering a visualization that is associated with a  
14 particular audio sample.

15 Accordingly, for at least this reason, this claim is allowable.

16 **Claim 22** depends from claim 21 and is allowable as depending from an  
17 allowable base claim. This claim is also allowable for its own recited features  
18 which, in combination with those recited in claim 21, are neither disclosed nor  
19 suggested in the references of record, either singly or in combination with one  
20 another.

### 21 **The Claimed Subject Matter Rejected Over Prasad**

22 **Claim 35** was previously amended and recites a method of providing a  
23 visualization comprising [previously added language appears in bold italics]:  
24  
25

- 1 • defining a frame rate at which visualization frames *of a visualization*  
2 are to be rendered, *the visualization frames being rendered from*  
3 *characterizing data that is computed from audio samples and*  
4 *which is used to create the visualization*;
- 5 • setting a threshold associated with an amount of time that is to be  
6 spent rendering a visualization frame;
- 7 • monitoring the time associated with rendering individual  
8 visualization frames;
- 9 • determining whether a visualization frame rendering time exceeds  
10 the threshold; and
- 11 • providing an effective frame rate for rendering visualization frames  
12 that is longer than the defined frame rate if the determined  
13 visualization frame rendering time exceeds the threshold.

14 In making out the rejection of this claim, the Office argues that the claim is  
15 rendered obvious in view of Prasad and Milne. More specifically, the Office  
16 argues that Prasad discloses all of the subject matter except for computing  
17 characterizing data from an audio sample. The Office then relies on Milne and  
18 argues that it discloses computing characterizing data from an audio sample which  
19 is then used create a visualization, citing to column 17, lines 15-39 in support  
20 thereof. Applicant disagrees with the Office's combination.

21 Prasad discloses methods and apparatus for synchronizing audio and video  
22 streams *in a video conferencing system*. During a video conferencing session,  
23 audio and video streams are transmitted from one processing system to a remote  
24 processing system, where they are recorded. Because the video stream has a  
25 variable frame rate during transmission, extra frames are inserted into the recorded  
video stream in order to maintain a constant, predetermined frame rate. During  
playback, synchronization information from the audio stream is provided by an  
audio playback process to a video playback process in order to synchronize the  
start of playing the audio and video streams, as well as to repeatedly synchronize

1 the audio and video streams during playback. Thus, the context in which Prasad's  
2 methods and systems operate is entirely different from the context associated with  
3 the subject matter of claim 35.

4 The excerpt of Milne cited by the Office simply describes a graphic player  
5 implementation that includes graphic sequence objects. Applicant can find no  
6 disclosure that describes a method in which visualization frames are rendered from  
7 characterizing data that is *computed from audio samples and which is used to*  
8 *create the visualization*. If the Office disagrees, Applicant respectfully invites the  
9 Office to point to a specific disclosure of this material. As this subject matter is  
10 neither disclosed nor suggested by these references, this claim is allowable.

11 **Claims 36 and 37** depend from claim 35 and are allowable as depending  
12 from an allowable base claim. These claims are also allowable for their own  
13 recited features which, in combination with those recited in claim 35, are neither  
14 disclosed nor suggested in the references of record, either singly or in combination  
15 with one another.

16 **Claim 38** was previously amended and recites one or more computer-  
17 readable media having computer-readable instructions thereon which, when  
18 executed by a computer, cause the computer to [previously added language  
19 appears in bold italics]:

- 20  
21 • set a threshold associated with an amount of time that is to be spent  
22 rendering a visualization frame for a given frame rate, *said*  
23 *visualization frame being associated with a visualization that is*  
24 *rendered using characterizing data computed from audio samples,*  
25 *which characterizing data is used to create the visualization;*
- monitor the time associated with rendering individual visualization frames;

- determine whether a visualization frame rendering time exceeds the threshold; and
- provide an effective frame rate for rendering the visualization that is longer than the defined frame rate if the determined visualization frame rendering time exceeds the threshold.


In making out the rejection of this claim, the Office argues that the claim is rendered obvious over the combination of Prasad and Milne. Applicant respectfully disagrees and traverses the Office's rejection.

As noted above, Prasad discloses methods and apparatus for synchronizing audio and video streams *in a video conferencing system*. Thus, the context in which Prasad's methods and systems are employed is quite different from the context in which the subject matter of claim 38 is employed. In an attempt to clarify the context of the presently-claimed subject matter, this claim was previously amended to recite that the visualization frame is associated with a *visualization* that is *rendered using characterizing data computed from audio samples*, and that the characterizing data is used to *create* the visualization. The Office now relies on Milne and argues that it discloses computing characterizing data from audio samples and using the computed data to create a visualization. Applicant respectfully submits that this is simply not the case. If the Office disagrees, Applicant respectfully invites the Office to point to a specific section of Milne and point out where this reference discloses *computing* characterizing data *from* audio samples, and using the characterizing data to create a visualization.

As neither of these references disclose or suggest any such subject matter, this claim is allowable.

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Respectfully Submitted,

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